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October Term, 1938.

THE COMMISSION OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE COMMONWEALTH OF MASSACHUSETTS,
Petitioners,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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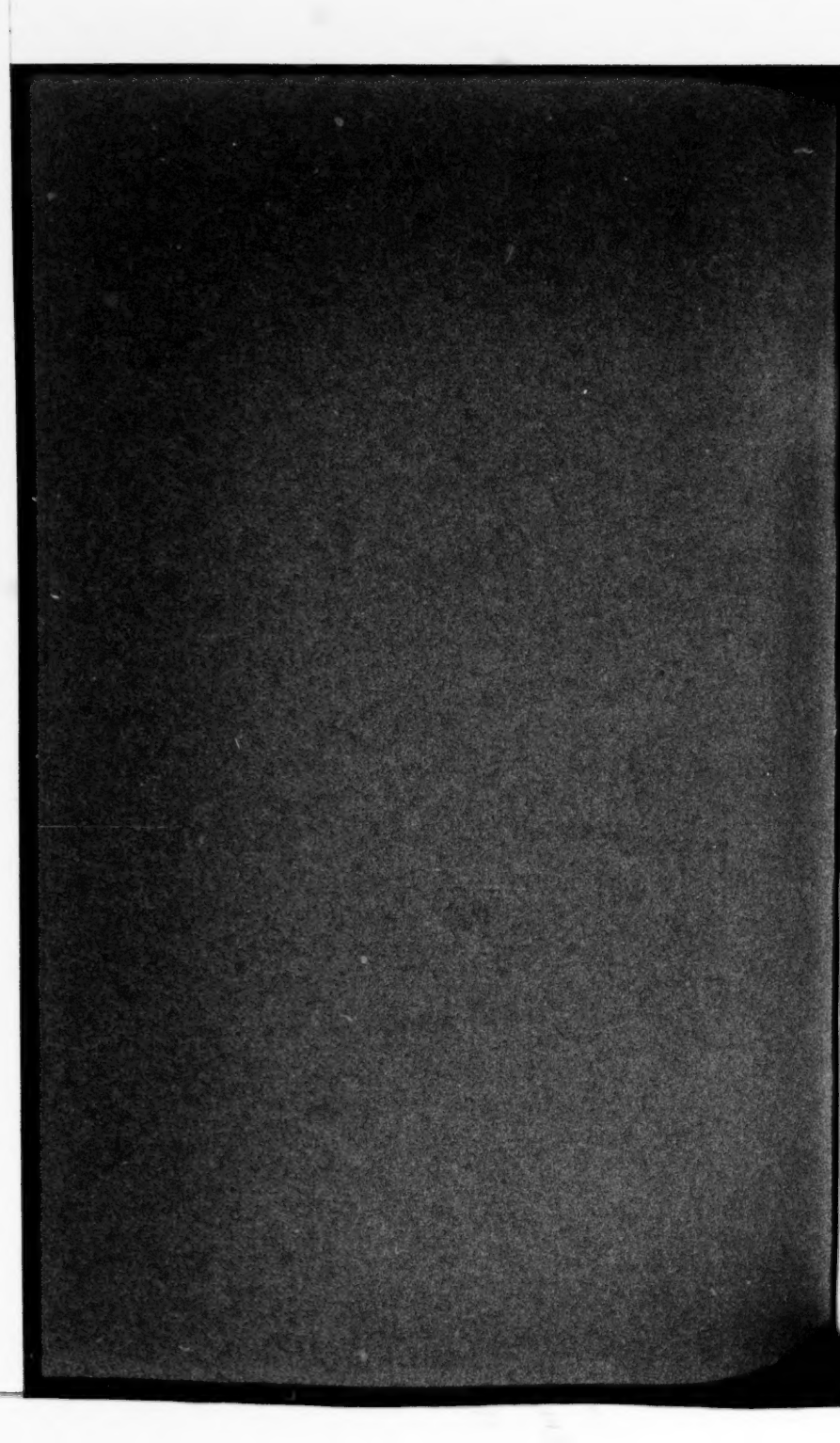

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Supreme Court of the United States.

OCTOBER TERM, 1949.

THE COMMISSION OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE COMMONWEALTH OF MASSACHUSETTS,
Petitioners,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioners, Thomas A. Flaherty, Edward N. Gadsby, John M. Whouley, David M. Brackman and James M. Carroll, constitute the Commission of the Department of Public Utilities for the Commonwealth of Massachusetts and pray that a writ of certiorari issue to review the decision of the Court of Appeals for the Second Circuit entered in the above cause on December 13, 1949, upholding, by majority decision, an order of the District Court of the United States for the District of Connecticut, and respectfully represent:

Opinions of the Courts Below.

The order of the District Court and memorandum of decision of Judge Hincks of that Court have not been reported. The order is dated April 25, 1949, and appears at pages 3 to 5 of the Record, and the memorandum of decision appears on pages 5 to 12 of the Record. The majority opinion and dissenting opinion in the Court of Appeals for the Second Circuit will be printed in 178 F. (2d) 559, and appears on pages 59 to 78 of the Record.

Jurisdiction.

The opinion of the Circuit Court was entered on December 13, 1949. The order of the District Court was entered on April 25, 1949.

The jurisdiction of this Court is invoked under 28 U.S.C. (new title), Section 1254(1).

Statute Involved.

The issue involves construction of Section 77(f) of the Bankruptcy Act, as amended, 11 U.S.C. Section 205(f) (Appendix, p. 38), especially the power of a District Court to construe certain provisions of a Consummated Reorganization Plan under a reservation of jurisdiction in absolute contradiction to the true intent of certain provisions of the Plan. The right granted to the Railroad under these decisions had been argued by the Commonwealth of Massachusetts before the Interstate Commerce Commission. The Commonwealth proposed that the Plan permit only such passenger service on the Old Colony Division until the losses were brought within reasonable limits. That proposal was considered, and expressly repudiated,

by the Interstate Commerce Commission prior to approval of the Reorganization Plan as finally consummated (261 I.C.C. 195, 202-204).

Interwoven herewith is the question of whether the paramount Federal power of the Interstate Commerce Commission to override state laws should be limited to the intent expressed by the Interstate Commerce Commission, and to have this Court determine whether action by a District Court by unauthorized exercise of judicial power in matters of intrastate regulation constitutes an unwarranted and illegal invasion of the rights and powers vested with the Commonwealth of Massachusetts in matters of intrastate regulation of railroads, and from the exercise of which the Commonwealth should not be held to have been deprived, by reasonable interpretation of the exercise of paramount Federal power arising under the said Section 77(f).

Questions Presented.

1. May a United States District Court of a neighboring District by judicial reasoning construe certain provisions of a Consummated Reorganization Plan in such manner as to alter in a material way and change those provisions from the expressed intent of the Interstate Commerce Commission while promulgating the Plan?

2. Whether the overriding of certain state laws by virtue of paramount Federal law deprives a sovereign commonwealth of all regulation of intrastate passenger service on the reorganized Railroad, or only to the extent specified in the Consummated Reorganization Plan.

3. May a District Court judge, acting under said Section 77(f), authorize a railroad to curtail passenger service on a division of said reorganized road until the losses

are brought within reasonable limits, when prior to the approval of the Reorganization Plan a similar proposal of the Commonwealth of Massachusetts had been rejected by the Interstate Commerce Commission?

4. Has a District Court judge power to enjoin a state regulatory commission from the exercise of regulation of passenger service within the Commonwealth when the District Court's opinion has only its own reasoning to support it? Nothing that this Court has ever decided or sanctioned gives it strength.

Davis v. *United States*, 328 U.S. 582, 603.

5. Where there is a conflict of regulatory power over intrastate passenger service, whether a United States District Court is authorized to construe a Consummated Reorganization Plan by a petition that only requests construction of a Consummated Reorganization Plan without averring subsequent changes in conditions or that requests re-examination of the Plan by the Interstate Commerce Commission in derogation of the sovereign powers of a state.

6. Whether the decision of the Court of Appeals for the Second Circuit is in conflict with decisions of this Court in so far as they have a bearing upon the question here presented.

Ecker v. *Western Pacific R.R. Corp.*, 318 U.S. 448.

Group of Institutional Investors v. *Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 318 U.S. 523.

Insurance Group Committee v. *Denver & Rio Grande Western R.R. Co.*, 329 U.S. 607, 611.

Reconstruction Finance Corp. v. *Denver & Rio Grande Western R.R. Co.*, 328 U.S. 495, 522.

7. Whether the decision of the Court of Appeals is in conflict with decisions in other districts or circuits, and in its own circuit.

In re Broadway Hotel Co. (C.C.A. 7th, 1942), 131 F. (2d) 120.

In re Utilities Power & Light Corp. (C.C.A. 7th, 1942), 125 F. (2d) 343.

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Clinton Trust Co. v. *Elliott Leather Co.* (C.C.A. 2d), 132 F. (2d) 299, 303, 304.

8. Whether the power vested in the Interstate Commerce Commission to supersede state charters as part of a complete Reorganization Plan empowers a District Court to construe certain provisions of that Plan in contravention to changes proposed prior to the adoption of the Plan by the Commonwealth of Massachusetts and rejected by the Interstate Commerce Commission.

9. Whether a Federal Court is empowered to restrain duly authorized officials of a sovereign state from acting on powers ordinarily entrusted to them in the regulation of intrastate passenger service and from which powers

they ought not to be held to have been deprived from acting by virtue of paramount Federal law.

Reasons Relied on for the Granting of the Writ.

The petitioners contend that the writ of certiorari should be granted for the following reasons:

1. This case presents an important question of Federal law which has not been, but should be, determined by this Honorable Court.

The Court of Appeals for the Second Circuit, by majority decision, has decided that a District Court under a reservation of jurisdiction in a Consummated Reorganization Plan may grant relief to a reorganized railroad in contravention of the true intent of the Consummated Plan. By virtue thereof the railroad is invested with purely discretionary powers, free from all regulatory supervision, to run such passenger service on a division of the reorganized railroad as it deems necessary or proper. As Mr. Justice Clark states in his dissenting opinion (p. 72):

> "The Commonwealth of Massachusetts objected strenuously to these provisions, and one of the proposals for modifying the plan which it made was to 'permit no more discontinuance of passenger traffic on the Old Colony properties than is needed to reach the critical figures.' Fourth Supplemental Report, 254 I.C.C. 405, 421. This was an endeavor to have the plan authorize exactly what the New Haven now claims it has discretionary power to attempt, i.e., to curtail passenger service until the losses are brought within reasonable limits, rather than discontinue it. But the Commission refused to accept this proposal. It said significantly: 'It is likewise clear that to modify materially the provision of the Joint Report in respect of

the Old Colony would be to nullify the compromise agreement reached after extended negotiations with little or no expectation that the suggested modification would prove acceptable to the interested parties.' "

This Court has not construed Section 77(f), relative to the extent of the power vested in a District Court under a reservation of jurisdiction in a Consummated Reorganization Plan so as to deprive and enjoin a state regulatory commission from exercising the powers vested in said commission. The decision of the Court of Appeals upholds an unauthorized exercise of judicial powers in matters of intrastate regulation of a railroad, and constitutes an unwarranted and illegal invasion of the rights and powers vested in the Commonwealth of Massachusetts in matters of intrastate regulation of railroads.

Of paramount interest is a determination of what powers are still reserved to a state after reorganization has been completed, even though certain of its powers have been superseded by virtue of paramount Federal law.

> *Callaway* v. *Benton,* 336 U.S. 132, 140.
> *Seaboard Air Line R.R. Co.* v. *Daniel,* 333 U.S. 118.

The Department of Public Utilities of the Commonwealth of Massachusetts is an administrative commission created by an Act of the Legislature of the Commonwealth of Massachusetts for the regulation and supervision of public utilities, such as railroads, and in these proceedings is the proper party to maintain this suit, in that the New Haven Railroad in its petition requested the District Court of Connecticut to enjoin the Department of Public Utilities from interfering with the proposal of the reorganized company to discontinue all or any part of the passenger

service on the former Old Colony lines (R. 20). In its petition the only question raised by the Railroad was whether the Court had power to construe a Reorganization Plan so as to arrive at a determination in contravention of the express intent of the Interstate Commerce Commission. By its decision an enjoining order from a District Court of a neighboring state barred the regulatory authorities of a sovereign commonwealth from exercising the powers ordinarily invested in it. The decision of this Honorable Court holding that paramount Federal law may override state law as part of a complete Reorganization Plan (*Palmer* v. *Massachusetts*, 308 U.S. 79) could hardly have been intended to be construed to deprive a sovereign state of all regulation of intrastate passenger service after reorganization had been completed. This Court could only have intended to say that the Interstate Commerce Commission had power to override such state powers in strict accordance with the terms of the Reorganization Plan. Since this Court is the final arbiter of the conflicting demands of state and national interests (*Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 766, 769), the determination of this Court on this matter is of national importance.

This Court should forthwith receive and decide whether a purported reservation of jurisdiction in a Consummated Reorganization Plan empowers a District Court of the United States to enjoin a state regulatory commission by construing the Plan in derogation of claims heretofore urged upon the Interstate Commerce Commission by the Commonwealth of Massachusetts and rejected by the Interstate Commerce Commission prior to confirmation of the Plan. Under such a reservation is a District Court authorized to "rewrite a fundamental feature of the plan"?

Is not certiorari an appropriate procedure by which all these questions may be decided and final justice done?

Certiorari affords a proper means by which this Court may correct and interpret the extent of and limits of paramount Federal law in apposition to state laws, and the Court should in the circumstances hear and determine the case in view of the public interest, so that operation of Section 77(f) may not be construed to permit a reorganized railroad to operate free of all regulation by either state or Federal power, and that the Courts may not under a Consummated Reorganization Plan keep either a reorganized road or state authority under perpetual tutelage.

Statement of Facts.

This appeal is another phase of reorganization under the Bankruptcy Act (11 U.S.C. Sec. 205) of the New York, New Haven and Hartford Railroad Company. The Commission of the Department of Public Utilities of the Commonwealth of Massachusetts has requested a writ of certiorari to the United States Court of Appeals for the Second Circuit, which, by majority decision rendered December 13, 1949, affirmed an order of the United States District Court for Connecticut restraining the said Department from interfering with the curtailment of passenger service on the Old Colony Division of the reorganized New Haven as of March 1, 1949.

This petition requests review of a decision of the Court of Appeals for the Second Circuit upholding an order of the United States District Court of Connecticut, made under a purported reservation of jurisdiction in the Consummated Reorganization Plan of the New Haven Railroad, entered September 11, 1947, in reorganization proceedings of the New York, New Haven and Hartford Railroad Company. The reorganization proceedings were started October 23, 1935, in the Bankruptcy Court for the

District of Connecticut pursuant to Section 77 of the Bankruptcy Act, U.S.C., Section 205. Other aspects of this reorganization plan have been reviewed by the said Court of Appeals on eleven, and by this Honorable Court on six, different occasions.

During the extended reorganization proceedings the Interstate Commerce Commission issued six supplemental reports. Its Third, Fourth and Fifth Reports covered aspects of the inclusion in the Plan of the Old Colony lines, most of which were adopted or ratified in its Sixth Supplemental Report.

Early in February of 1949 the New Haven Railroad petitioned the said Department of Public Utilities for authority to curtail passenger service on the Old Colony Division. On February 28, 1949, the Department of Public Utilities, in accordance with the statute, Mass. G.L. (Ter. Ed.) c. 160, § 128, ordered the New Haven to continue unchanged the passenger schedule theretofore in effect on said Old Colony Division pending investigation and hearing. On the same day, upon urgent oral representations on behalf of the said Railroad, which were reduced to writing on the following day in a written petition for construction for the Plan of Reorganization and for a permanent injunction (R. 14-20), the said District Court of Connecticut temporarily restrained the Department of Public Utilities of the Commonwealth of Massachusetts, and all other persons, from interfering with curtailment of passenger service on said Division of said reorganized Railroad. It issued a temporary stay order *ex parte*, because it appeared that the Railroad had made all plans to put into effect on March 1st the proposed curtailment. The said District Court ordered a hearing on March 8th, to "determine if there were cause why the restraining order should not be made permanent" (Memorandum of Decision, R. 6). At said hearing Assistant Attorneys Gen-

eral entered special appearances for the State Public Utilities Department, and filed a plea to the jurisdiction.

By leave of Court said counsel filed an answer to the New Haven petition on March 25th. The New Haven filed a reply brief on April 8th. On April 14th the Court filed a memorandum of decision, findings and conclusions, which overruled the special appearances, the plea to the jurisdiction, and upheld the Railroad's prayers (R. 5-12). The said District Court entered a final order on April 25th making the injunction permanent.

The Department appealed under Section 24a of the Bankruptcy Act (11 U.S.C. Sec. 47(a)) from the order of the United States District Court of Connecticut entered on April 25, 1949, which permanently restrained the Department of Public Utilities and the Attorney General of the Commonwealth of Massachusetts and all other persons from interfering with curtailment of passenger service effective March 1, 1949, on the Old Colony Division of the reorganized Railroad Company.

The Court of Appeals for the Second District decided on December 13, 1949, by a divided Court, to uphold the order of the District Court of Connecticut (R. 59-77). On the same date that Court entered an order affirming the order of the District Court of the United States for the District of Connecticut.

Statement of Material Facts.

The petition of the reorganized Railroad (R. 20) prayed only that the District Court "construe the foregoing provisions of the Plan to permit the Company to discontinue all or any part of the passenger service on the former Old Colony lines and to experiment with it at will to the end that the losses from it may be limited or reduced." That

petition did not ask instructions as to questions which might arise under subdivision (n) of the reservation of jurisdiction quoted below.

In this petition for a writ of certiorari the Commonwealth of Massachusetts, acting through its Department of Public Utilities, does not challenge or question the power of paramount Federal law to override state laws in the interests of interstate commerce under Section 77. The Commonwealth asserts, however, that the exercise of paramount Federal law overriding state laws should be strictly limited to the express powers granted by the Interstate Commerce Commission in a Consummated Reorganization Plan, and that exercise of judicial discretion in this matter has exceeded the power exercised by the Interstate Commerce Commission in the Consummated Reorganization Plan of the New Haven Railroad to override the statutes and charters of the Commonwealth of Massachusetts.

The salient provisions pertinent to the issue here raised in the Reorganization Plan are as follows:

Section N(3)(a) (set forth in full in the Record on pages 14 and 15) states that passenger service on Old Colony's lines may be discontinued if during any of the periods described below passenger losses on Old Colony's lines shall exceed the critical figure at the time in effect. The critical figure for any twelve consecutive calendar months, all of which are within the first two years following the consummation of the Plan, shall be $850,000. The critical figure for any twenty-four consecutive calendar months, all of which shall be after the end of the two-year period, shall be $500,000.

Paragraph (3)(b) (set forth in full on page 16 of the Record) provides a method of determining the amount of the passenger losses on the Old Colony Division, and provides a method for the Department of Public Utilities of

Massachusetts to question the computation of the reorganized company, if it deems the Commonwealth or the public aggrieved by a proposed discontinuance of passenger service.

The Consummated Reorganization Plan also contained sixteen express reservations of jurisdiction, of which only the following are material here:

l. To consider and act in any matter arising out of the option granted in the Plan to the Commonwealth of Massachusetts for the purchase of the so-called "Boston Group lines."

m. To consider and act on any question respecting the "critical figures" established by the Plan with respect to the determination by the reorganized company to curtail passenger service on the Old Colony lines.

q. To take such further action as may be necessary to put into effect and carry out this order and the Plan and all other orders relative thereto heretofore entered by the Court, provided, however, that nothing in this Section 2 shall be construed as a reservation of jurisdiction to change the Plan, or any of the rights vested thereunder or any of the rights of the holders of the new securities, or persons entitled to receive them.

3. Termination of Jurisdiction—except as provided in Section 2 of this subdivision XI hereinabove, all jurisdiction of this Court in or by virtue of these proceedings is hereby, as of the consummation date, wholly terminated; and except only as aforesaid and effective as of the consummation date, this proceeding is hereby closed.

The Interstate Commerce Commission in its First Supplemental Report, 244 I.C.C. 239, 264, 265, inserted in the Plan the "escape clause" intended to permit temporary continuance so long as the losses incurred were not too great. The escape clause met opposition and the controversial joint report, adopted by the Interstate Commerce Commission, allowed the New Haven to discontinue passenger service on the Old Colony if losses exceeded certain critical figures (Third Supplemental Report, 254 I.C.C. 63).

The Commonwealth of Massachusetts objected strenuously to those provisions, and one of the proposals for modifying the Plan which it made to the Interstate Commerce Commission was to "permit no more discontinuance of passenger traffic on the Old Colony properties than is needed to reach the critical figures" (Fourth Supplemental Report, 254 I.C.C. 405, 421). In other words, the Interstate Commerce Commission, prior to the adoption of the Plan, declined to permit exactly what the New Haven now claims it has discretionary power to attempt, *i.e.*, to curtail passenger service until the losses are brought within reasonable limits, rather than abandon such service.

Yet the District Court of Connecticut by judicial reasoning has upheld the Railroad and its order has been affirmed by the Court of Appeals.

Section N(2)(a) of the Plan provides: "The charter of the reorganized company and of Old Colony shall be amended, and the franchises and statutory obligations of the reorganized company and of Old Colony shall be amended or superseded so that neither road will be under any obligation to operate passenger service on Old Colony lines. The reorganized company shall, however, undertake . . . a contractual obligation to operate for its own account passenger service on Old Colony lines, if and so

long as, the losses therefrom do not exceed the critical figures provided below."

The question is whether the exercise of paramount Federal law, relieving the reorganized Railroad from obligations imposed by state charter which provided that the reorganized road might only conduct passenger service until a reasonable test had shown that the losses therefrom would constitute too great a burden on interstate commerce, permits the Railroad to operate such passenger service as it desires free from all regulatory procedure.

The Commonwealth maintains that the Interstate Commerce Commission, under the powers vested in it by said Section 77, authorized the Railroad to abandon passenger service when and if the losses exceeded the critical figures. Thereafter the Railroad could no longer operate passenger service on the Old Colony Division. Many statements have been made and probably will be made that, if the Department of the Attorney General advocates abandonment of passenger service on the Old Colony lines, the Railroad will be glad to comply. The short answer to that argument is that in strict compliance with the provisions of the Reorganization Plan the Railroad must abandon passenger service and, regardless how any official of the Commonwealth of Massachusetts, including the Attorney General, may think, the Commonwealth of Massachusetts is powerless to prevent such action being taken in strict accordance with the terms of the Plan, because paramount Federal law has superseded the rights and powers of the Commonwealth of Massachusetts in that particular aspect. In the interests of interstate commerce it would be futile for the officials of the Commonwealth of Massachusetts to argue that the Commonwealth has any choice in the matter. In these proceedings, however, the reorganized New Haven does not pursue its right to abandon passenger service; it merely asks the Court to construe a provision

in the Reorganization Plan in absolute derogation of the true intent of the Plan as finally adopted by the only power vested with authority to override state laws in reorganization proceedings. Under the order of the District Court of Connecticut, as affirmed by the Circuit Court of Appeals, the reorganized Railroad may "cease, taper off, continue or expand" passenger service on the Old Colony Division as it desires.

In this issue the Department of Public Utilities is the sole power authorized by statute to represent the interests of the Commonwealth of Massachusetts. By this petition it endeavors to protect the rights inherent to this Commonwealth, of those powers which have not been superseded by any reasonable interpretation of the power exercised by the Interstate Commerce Commission in the promulgation of the Reorganization Plan as finally consummated in the New Haven proceedings.

The Interstate Commerce Commission, being an agency of limited powers and authority, may not exceed its statutory powers.

> *United States* v. *Pennsylvania Railroad Co.*, 242 U.S. 208.

By Section 77(c)(6) the Interstate Commerce Commission is authorized to permit abandonment in accordance with Section 1 of Title 49. The Interstate Commerce Commission has always rejected the contention that it has power to authorize curtailment under Section 1 of Title 49. Hence, unless the Reorganization Plan expresses in clear language the thought that the Plan authorizes curtailment, judicial interpretation should not authorize curtailment as opposed to abandonment.

Argument.

This Court decided in the R.F.C. and Insurance Group cases, 328 U.S. and 329 U.S., that a Consummated Reorganization Plan cannot be re-examined by a Federal District Court or the Interstate Commerce Commission on matters considered by and previously rejected by the Interstate Commerce Commission. In its petition to the District Court of Connecticut the reorganized New Haven Railroad did not allege that any changed conditions required re-examination. The reorganized Railroad merely asked that Court to construe certain provisions of the Plan so as to permit it to operate such passenger service as it desired on the Old Colony Division (R. 20). In fact and in truth, it asked the Court to construe certain provisions of the Plan in accordance with the desires of the Railroad and in direct contravention to the Plan finally adopted by the Interstate Commerce Commission. The Interstate Commerce Commission had decisively rejected the proposal of the Commonwealth of Massachusetts to permit no more discontinuance of passenger traffic on the Old Colony than is needed to reach the critical figures (Fourth Supplemental Report, 254 I.C.C. 405, 421, 422). A decree of confirmation is final under Section 77 where there is no provision for subsequent modification. Under a reservation of jurisdiction a Court ought not to modify or change the Plan. The confirmation order confirmed by the Second Circuit in 147 F. (2d) 40, 51, was indirectly affirmed by this Court in denying certiorari in 325 U.S. 884, and a rehearing in 326 U.S. 805. The Consummated Reorganization Order was a complete and final disposition of the debtor's property, and under any reservation of jurisdiction the only power vested in the Court is to see that the Plan is carried out according to its true intent.

This Court has authority to bring a case before it for decision by a writ of certiorari "after rendition of judgment or decree" of the Court of Appeals (28 U.S.C. Sec. 1254(1)). Such procedure is provided for by Rule 38(b) of this Court, which states:

> "Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Nothing in the Bankruptcy Act restricts this plenary authority (Section 24 of the Bankruptcy Act, 11 U.S.C. Sec. 47).

So certiorari is a means by which this Court may exercise its full authority. Specifically it is proper procedure for ending a departure in the Courts below from the effect of recent decisions of this Court.

The consequences to the public regard for law and order that may follow upon any other course are far more serious.

The decision below is a dangerous departure from doctrines clearly settled by this Court and the administrative powers of the Interstate Commerce Commission and regulatory commissions of the several states.

The questions are not alone of public concern by reason of the substantial risk the decision raises of an indefinite

prolongation of controversies affecting the Court's powers under Section 77, but are of vital concern to the inherent powers of a state, not expressly or clearly superseded by operation of paramount Federal law. It is even more important for its disturbing implications in the whole field of corporate reorganization involving problems arising under the Commerce Clause of the United States Constitution, and is thus of national importance.

Prayer and Motion.

We respectfully ask that this Court may forthwith:

a. Grant a writ of certiorari to review the decision of the Court of Appeals dated December 13, 1949, in such manner as to give this Court authority to dispose of the whole matter, or order the matter referred to the Interstate Commerce Commission in the exercise of judicial discretion of intervening rights.

b. Summarily vacate and supersede said decision.

c. Grant all such other relief as may be proper.

Respectfully submitted,

COMMISSION OF THE DEPARTMENT OF PUBLIC UTILITIES,

By their Attorneys,

FRANCIS E. KELLY,
Attorney General,

FRANCIS J. ROCHE,
Assistant Attorney General,

DAVID H. STUART,
Assistant Attorney General.

Supreme Court of the United States.

OCTOBER TERM, 1949.

THE COMMISSION OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE COMMONWEALTH OF MASSACHUSETTS,
Petitioners,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION.

Statement.

This is a petition for a writ of certiorari to review a decision of the United States Court of Appeals for the Second Circuit, dated December 13, 1949, affirming an order of the United States District Court for the District of Connecticut, dated April 25, 1949, which permanently restrained the Department of Public Utilities for the Commonwealth of Massachusetts, the Attorney General and all other persons from interfering with partial discontinuance of passenger service as of March 1, 1949, on the Old Colony Division of the Reorganized New York, New Haven and Hartford Railroad Company.

Opinions of the Courts Below.

The order of the District Court and memorandum of decision of Judge Hincks of that Court have not been reported. The order is dated April 25, 1949, and appears at pages 3 to 5 of the Record, and the Memorandum of Decision appears on pages 5 to 12 of the Record. The majority opinion and dissenting opinion in the Court of Appeals for the Second Circuit will be printed in 178 F. (2d) 559, and appears on pages 59 to 78 of the Record.

Jurisdiction.

The opinion of the Circuit Court was entered on December 13, 1949. The order of the District Court was entered on April 25, 1949.

The jurisdiction of this Court is invoked under 28 U.S.C. (new title), Section 1254(1).

Statute Involved.

The issue involves construction of Section 77(f) of the Bankruptcy Act, as amended, 11 U.S.C. Section 205(f) (Appendix, p. 38), especially the power of a District Court to construe certain provisions of a Consummated Reorganization Plan under a reservation of jurisdiction in absolute contradiction to the true intent of certain provisions of the Plan. The right granted to the Railroad under these decisions had been argued by the Commonwealth of Massachusetts before the Interstate Commerce Commission. The Commonwealth proposed that the Plan permit only such passenger service on the Old Colony Division until the losses were brought within reasonable limits. That proposal was considered, and expressly repudiated, by the Interstate Commerce Commission prior to approval

of the Reorganization Plan as finally consummated (261 I.C.C. 195, 202-204).

Interwoven herewith is the question of whether the paramount Federal power of the Interstate Commerce Commission to override state laws should be limited to the intent expressed by the Interstate Commerce Commission. And to have this Court determine whether action by a District Court by unauthorized exercise of judicial power in matters of intrastate regulation constitutes an unwarranted and illegal invasion of the rights and powers vested with the Commonwealth of Massachusetts in matters of intrastate regulation of railroads. From the exercise of which the Commonwealth should not be held to have been deprived, by reasonable interpretation of the exercise of paramount Federal power arising under said Section 77(f) in the Consummated Reorganization Plan.

Questions Raised.

The various questions raised are set forth in full in the petition for this writ. They may be summarized as follows:

The point of decision on which review is sought.

The real question raised by this petition is whether the United States District Court for the District of Connecticut, sitting as a Court of Bankruptcy, after reorganization proceedings have been consummated under Section 77 of the Bankruptcy Act (11 U.S.C. 205), had authority under a reservation of jurisdiction to construe certain provisions of the Consummated Reorganization Plan to permit the reorganized Railroad to continue, partially, passenger service on its Old Colony Division in derogation of the expressed intent of the Interstate Commerce Commission,

to order abandonment of passenger service on the Old Colony Division of the reorganized Railroad on the happening of certain contingencies. A further question is raised whether the overriding of certain powers of the state by paramount Federal authority, under a grant of power of the Commission, thereafter operates to supersede all regulatory powers of the state or Commonwealth.

Argument.

I.

UNDER SECTION 77 THE BANKRUPTCY COURT IS NOT VESTED WITH POWER TO AUTHORIZE A RAILROAD TO CHANGE THE PLAN AFTER A CONSUMMATED REORGANIZATION PLAN BECAME EFFECTIVE.

Under settled principles, the Interstate Commerce Commission may amend the Railroad's charter in the interests of interstate commerce. In this reorganization it ordered the Railroad to abandon passenger service on its Old Colony lines on the happening of certain contingencies based on excessive operating losses.

II.

SECTION 77 AUTHORIZES THE AMENDMENT OF THE RAILROAD'S CHARTER AND THE SUPERSEDING OF STATE CHARTERS AND LAWS ONLY AS THEY ARE MADE AN INTEGRAL PART OF THE PLAN OF REORGANIZATION, FIRST APPROVED BY THE INTERSTATE COMMERCE COMMISSION.

The statute contains neither express nor general language endowing the bankruptcy Court with plenary authority at any time to order a Railroad, which has emerged from its jurisdiction as a reorganized entity, to hold that, since the Interstate Commerce Commission had

assumed the jurisdiction granted it to supersede state authority in certain particulars, to wit, the power to abandon passenger service on a division of the said Railroad, the Court is vested with authority to modify the express terms of the Plan by permitting the Railroad, some two years after it has been reorganized, to discontinue only certain passenger service.

A railroad cannot abandon the public service which was the condition upon which its franchises were granted and still retain them, save perhaps as proper authority has determined that the state interest is outweighed by the interests of the nation in adequate, economical and efficient railway transportation service.

Southern Pacific Co. v. *Arizona*, 325 U.S. 761, 769.

III.

THE CONSUMMATED REORGANIZATION PLAN OF THE NEW HAVEN RAILROAD AUTHORIZED THE REORGANIZED RAILROAD TO ABANDON PASSENGER SERVICE ON THE OLD COLONY DIVISION, BUT BY VIRTUE OF THE ORDER OF THE DISTRICT COURT IT IS NOW AUTHORIZED TO RUN ANY NUMBER OF PASSENGER TRAINS ON THE SAID DIVISION IN ACCORDANCE ONLY WITH ITS OWN DESIRES, FREE OF ALL REGULATORY AUTHORITY. WHEN, IN THE EXPRESS LANGUAGE OF THE PLAN, IT SHALL ELECT TO ABANDON PASSENGER SERVICE, IT MUST BE HELD THAT ITS RIGHT TO RUN PASSENGER TRAINS ON THAT DIVISION TERMINATES. THEREAFTER ITS ONLY POWER IS TO OPERATE FREIGHT SERVICE ON THAT DIVISION.

In legal contemplation the Old Colony Division was devoted to the transportation of passenger and freight. When, by operation of paramount Federal law, the reorganized Railroad is relieved of its legal duty to furnish

passenger service, it follows that its only power thereafter is to continue freight service.

Chesapeake & Ohio Ry. Co. v. *Public Service Comm. of W. Va.*, 242 U.S. 603, 607.

To conclude to the contrary would be to declare the corporate charter was purely unilateral, that is, was binding in favor of the corporation as to all rights conferred upon it and was devoid of obligation as to duties imposed, even although such duties were the absolute correlation of the rights conferred.

Missouri Pacific Ry. Co. v. *Kansas*, 216 U.S. 262, 279.

IV.

POWER TO PERMIT OR DENY TERMINATION OF SERVICE ON INTRASTATE LINES IS RESERVED TO THE SEVERAL STATES IN THE ABSENCE OF FEDERAL ORDERS DISPLACING THAT POWER. THIS POWER IS CUSTOMARILY EXERCISED BY REGULATORY COMMISSIONS. IN MASSACHUSETTS IT IS VESTED IN THE DEPARTMENT OF PUBLIC UTILITIES, SUBJECT TO JUDICIAL REVIEW.

Atlantic Coast Line R.R. Co. v. *No. Carolina Corp. Comm.*, 206 U.S. 1, 19.

Congress through its regulatory commissions has authority to direct the abandonment of intrastate service when its discontinuance imposes an undue burden on interstate commerce, and even the explicit provisions of the Railroad's charter must yield to this authority.

Colorado v. *United States*, 271 U.S. 153, 165.
Transit Comm. v. *United States*, 284 U.S. 360, 369.

Congress has not exercised its power over partial discontinuance of service as distinguished from complete abandonment.

The Interstate Commerce Commission has repeatedly held that this does not confer upon the Commission power to authorize partial discontinuance of rail service.

> *Public Convenience Application of K.C.S. Ry.*, 94 I.C.C. 691, 692.
> *Morris* v. *Essex R.R. Co.*, 175 I.C.C. 49, 52.

It is clear that under Section 77 the rights of the states under partial discontinuance of service as distinguished from complete abandonment remains unimpaired, provided, that the orders of the state's Commission do not impose obligations which conflict with the Commission's order made within its field.

> *Transit Comm.* v. *United States*, 284 U.S. 360, 369.

Subdivision (c)(6) of Section 77 (11 U.S.C. 205(c)(6); Appendix, p. 38) provides that it shall be the duty of the lessee to continue operation on or for the account of the lessor "until the abandonment of such line is authorized by the Commission in accordance with the provisions of Section 1 of Title 49, as amended."

Subdivision (b)(5) (11 U.S.C. 205(b)(5)) provides that the Plan may provide for "the amendment of the charter of the debtor." Authority to amend the charter certainly embraces authority to provide for the termination of passenger service which the charter requires.

Subdivision (f) of Section 77 (11 U.S.C. 205(f); Appendix, p. 38) provides that on confirmation of the Plan it shall be put into effect "the laws of any State or the deci-

sion or order of any State authority to the contrary, notwithstanding." Then and then only under the Act is state authority superseded, and only to the extent specified.

V.

A Court cannot amend, alter or modify a reorganization plan.

We cannot see why a judge should be able to modify the conditions under which the Interstate Commerce Commission has superseded state authority, especially where there is no inherent power in the Interstate Commerce Commission to order partial discontinuance of service.

Only inescapable language could justify a Court in assuming so extreme and unnecessarily provocative a power. In all questions affecting the conflicting interests of the utility and the public, the arbiter is to be the Interstate Commerce Commission rather than the bankruptcy judge. A bankruptcy judge acting alone is not vested with power to abolish or delimit the public service which the utility was chartered to perform.

The specific powers granted the Interstate Commerce Commission negative any authority to authorize partial discontinuance of passenger service; or to vest the bankruptcy judge acting alone to assume that a specific power granted by the Interstate Commerce Commission to abandon passenger service can be modified by him so as to empower the reorganized Railroad to partially discontinue such service.

VI.

WHEN THE RAILROAD HAD ALREADY INVOKED THE JURISDICTION OF THE STATE REGULATORY COMMISSION, THE COURT'S RESERVED POWER DOES NOT PERMIT IT TO PREVENT OR FORESTALL THE DECISION OF THE STATE COMMISSION.

A state commission is empowered to find that a partial or reduced service was required as a matter of public convenience and necessity for the Railroad.

On February 28, 1949, there was no warrant for saying that the Department of Public Utilities of Massachusetts had delayed the proceedings so as to show that it meant to evade any decision. Respect for it and for the Commonwealth required that it should be allowed to proceed as in other cases. Even though the Interstate Commerce Commission had determined that the reorganized New Haven under certain conditions could abandon passenger service, that assumption of paramount Federal authority had not deprived the Commonwealth of Massachusetts of its power to determine what passenger service should be continued so long as the reorganized Railroad had not elected to abandon passenger service.

VII.

THE INTERSTATE COMMERCE COMMISSION, NOT THE COURT, HAS THE PRIMARY RESPONSIBILITY FOR THE CONTENT OF ANY PLAN OF REORGANIZATION, FOR THE ADMINISTRATIVE DETERMINATION THAT COMPRISES IT, AND FOR THE PROPER SOLUTION OF ALL QUESTIONS IN THE PUBLIC INTEREST IN RAILROAD OPERATION THAT ARE INVOLVED IN A PLAN, INCLUDING WHO SHALL OPERATE OR ABANDON WHAT RAILROAD PROPERTY AND ON WHAT TERMS.

Ecker v. *Western Pacific R.R. Corp.*, 318 U.S. 448, 468.

If a state regulatory commission's orders or procedure do not arbitrarily interfere with the operation of the Interstate Commerce Commission, such regulations have never been held unreasonable.

Atchison, Topeka & Santa Fe Ry. Co. v. *R.R. Comm.*, 283 U.S. 380, 395.

VIII.

IN THE DECISIONS OF THE COURT OF APPEALS OF THE SECOND CIRCUIT, AND OF THE UNITED STATES DISTRICT COURT OF CONNECTICUT THERE IS A TOTAL LACK OF FACTS AND FINDINGS ESSENTIAL TO DEMONSTRATE THAT THE ACT OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES, IN DEFERRING THE MARCH 1 DATE FOR PARTIAL DISCONTINUANCE OF PASSENGER SERVICE ON THE OLD COLONY LINES OF THE REORGANIZED NEW HAVEN UNTIL INVESTIGATION, CAUSED OR WOULD CAUSE A SERIOUS AND MAJOR BURDEN UPON THE NATIONAL INTEREST IN INTERSTATE COMMERCE SO AS TO OUTWEIGH WHATEVER STATE OR LOCAL BENEFITS ARE ATTRIBUTABLE TO STATE REGULATION.

Southern Pacific Co. v. *Arizona*, 325 U.S. 761, 769.

Nor can it be held that state regulation conflicts with the intent of the Interstate Commerce Commission or infringes its policy as expressed in the Consummated Reorganization Plan.

Id. at 766.

IX.

REGULATION OF INTRASTATE COMMERCE ON THE OLD COLONY LINES SO LONG AS PASSENGER SERVICE IS PERMITTED UNDER THE CONSUMMATED REORGANIZATION PLAN IS LOCAL IN CHARACTER AND EFFECT AND ITS IMPACT ON THE NATIONAL COMMERCE DOES NOT SERIOUSLY INTERFERE WITH ITS OPERATION. SUCH REGULATION HAS BEEN GENERALLY HELD TO BE WITHIN STATE AUTHORITY.

Southern Pacific Co. v. *Arizona*, 325 U.S. 761, 767.

So. Carolina State Highway Dept. v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 188.

The continued operation of passenger service on the Old Colony Division of the reorganized New Haven must be held to be under the regulatory authority of the Commonwealth of Massachusetts so long as any passenger service is permitted under the reorganization plan.

X.

PARTIAL DISCONTINUANCE OF PASSENGER SERVICE ON THE OLD COLONY DIVISION OF THE REORGANIZED NEW HAVEN RAILROAD IS NOT AN INTEGRAL PART OF THE CONSUMMATED REORGANIZATION PLAN.

The reports of the Interstate Commerce Commission indicate clearly that the Commission originally indicated the losses from passenger service on the Old Colony lines had been so great as to constitute an unreasonable burden on interstate commerce; later it modified its idea of excluding Old Colony from the reorganized Railroad by stating that, if and when losses from passenger service exceeded the critical figures, passenger service might be discontinued. To reason that by the use of that term the In-

terstate Commerce Commission intended to confer power on a Court or the Railroad to discontinue such passenger service thereon as it desired, results in such a material and vital change in the Consummated Reorganization Plan that it permits the Railroad to do exactly what the Commission refused, at the suggestion of the Commonwealth of Massachusetts, to include in the Plan. In its objections to the report of the Joint Committee, the Commonwealth proposed that the Interstate Commerce Commission modify the Plan "to permit no more discontinuance of passenger traffic on the Old Colony properties than is needed to reach the critical figures."

> Fourth Supplemental Report, 254 I.C.C. 405, 421.

In refusing to adopt this proposal, the Commission said:

> "It is likewise clear that to modify materially the provisions of the Joint Report in respect of the Old Colony would be to nullify the compromise agreement reached after extended negotiations with little or no expectation that the suggested modification would prove acceptable to the interested parties."
>
> Id. at 422.

It is therefore conclusive that the Interstate Commerce Commission regarded the proposal of the Commonwealth of Massachusetts as a material modification of the Plan, yet the District Court, some two years after the Reorganization Plan had been consummated, regards a similar proposal by the reorganized Railroad as being clearly within the provisions of the Plan.

The Commission rejected the express provisions for the power now claimed by the New Haven. Therefore it is

reasonable to assume that it decided that this proposal now made by the Railroad would impose an undue burden on interstate commerce. It therefore, under the powers granted to it in Section 77, intended to incorporate in the Plan the provision that, when and if passenger service on the Old Colony Division of the reorganized Railroad caused losses exceeding the critical figures, the reorganized New Haven Railroad must abandon passenger service on that line.

The precise terms of SN(2)(a) and SN(3)(a) give clear warrant that the Interstate Commerce Commission used the term "discontinue" in the sense of abandon or terminate. Further, in neither of those sections, nor in Article XI, Sec. (2)(n), of the final consummation order and decree which reserved jurisdiction to the District Court "with respect to the termination by the Reorganized Company, of passenger service on Old Colony lines," can be found any express or implied reservation or authority to modify the plain intent of the Interstate Commerce Commission.

XI.

Intent of Railroad to Alter Plan.

The action of the reorganized New Haven warrants the inference that its proposal to operate such passenger service on the Old Colony lines as it desires is a recent contrivance. On February 9, 1948, the Railroad notified the Massachusetts Department of Public Utilities of its intention to abandon passenger service on its Old Colony Division as soon as the trial period had elapsed. One year later, in February of 1949, it petitioned the same Department for authority to discontinue certain passenger trains on its Old Colony Division. Early in February of 1949 it admitted by its actions that the Massachusetts regulatory

commission had authority in the matter. Not until the last day of that month did it seek the aid of the Federal District Court of Connecticut. That Court assumed jurisdiction solely on jurisdictional reasoning based on the fact that a greater power ordinarily includes a lesser one.

In rendering its order on the basis of its memorandum of decision (R. pp. 5-12), affirmed by a divided Court of Appeals, a vital and material change was written into the Plan, neither in accordance with the intent of the only authority authorized to override state law, the Interstate Commerce Commission, nor with the true intent of the decisions of this Honorable Court.

Under Section 77 of the Bankruptcy Act the experience and judgment of the Commission must be relied upon for final determination with matters affecting the public interest.

Ecker v. *Western Pacific R.R. Corp.*, 318 U.S. 448.

Group of Institutional Investors v. *Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 318 U.S. 523.

R.F.C. v. *Denver & Rio Grande Western R.R. Co.*, 328 U.S. 495, 508.

XII.

THE COURTS MAY NOT SET ASIDE A PLAN UNLESS FOR CHANGES WHICH WERE NOT ENVISAGED OR CONSIDERED BY THE COMMISSION IN ITS DELIBERATIONS UPON, OR EXPLANATIONS OF, THE PLAN.

R.F.C. v. *Denver & Rio Grande Western R.R. Co.*, 328 U.S. 495, 521, 522.

Insurance Group Committee v. *Denver & Rio Grande Western R.R. Co.*, 329 U.S. 607, 611.

XIII.

UNTIL THE REORGANIZED NEW HAVEN HAS ABANDONED PASSENGER SERVICE ON ITS OLD COLONY DIVISION, POWER TO PERMIT OR DENY CURTAILMENT OF SERVICE IS RESERVED TO THE COMMONWEALTH.

This power is customarily exercised by regulatory commissions. In Massachusetts it is vested in the Department of Public Utilities subject to judicial review.

The state, which granted the Railroad its franchises, may permit it to abandon part of its lines of a single service, such as passenger service, retaining its lines for freight.

And the state may establish regulatory bodies vested with power to determine what constitutes reasonable service.

> *Atlantic Coast Line R.R. Co.* v. *No. Carolina Corp. Comm.*, 206 U.S. 1, 19.
> *Chicago, Burlington & Quincy R.R. Co.* v. *R.R. Comm. of Wisconsin*, 237 U.S. 220, 226, 227.
> *St. Louis-San Francisco Ry. Co.* v. *Alabama Public Service Comm.*, 279 U.S. 560.

In Massachusetts this power has been vested in the Department of Public Utilities, subject to judicial review.

> Massachusetts General Laws (Ter. Ed.) c. 159, sec. 16; c. 25, sec. 5 (Appendix to this Brief, pp. 40-42).

Massachusetts laws forbid curtailment of passenger service without approval of the Department after notice and public hearing.

> *Department of Public Utilities* v. *Trustees of N.Y., N.H. & H. R.R.*, 304 Mass. 664.

For a state to require such proceedings and continue operations while they are pending does not conflict with the Fourteenth Amendment, and does not impose any undue burden on interstate commerce.

St. Louis-San Francisco Ry. Co. v. *Alabama Public Service Comm.*, 279 U.S. 560.
Palmer v. *Massachusetts*, 308 U.S. 79.

XIV.

OVERRIDING OF STATE LAWS BY GRANTING POWER TO ABANDON PASSENGER SERVICE UNDER A CONSUMMATED REORGANIZATION PLAN UNDER CERTAIN CONTINGENCIES UNDER SECTION 77 SHOULD NOT BE CONSTRUED TO PERMIT SUCH OPERATION OF PASSENGER SERVICE AS THE REORGANIZED RAILROAD DESIRES.

Colorado v. *United States*, 271 U.S. 153, 165.
Palmer v. *Massachusetts*, 308 U.S. 79.

Even though it might be held that under Section 77 the Interstate Commerce Commission could authorize partial discontinuance of passenger service as part of a Consummated Reorganization Plan, such power must be expressed in clear language, or be reasonably deduced from the decisions and discussions of the Interstate Commerce Commission.

XV.

THIS HONORABLE COURT HAS ALWAYS BEEN RELUCTANT TO CONSTRUE THE EXERCISE OF PARAMOUNT FEDERAL AUTHORITY SAVE IN STRICT ACCORDANCE WITH THE EXPRESSED INTENT OF THE PROPER AUTHORITY. IT DOES NOT SEEM REASONABLE THAT THE ORDER PERMITTING A DISTRICT COURT TO INCORPORATE A MATERIAL ALTERATION OF A CONSUMMATED REORGANIZATION PLAN BY JUDICIAL CONSTRUCTION WOULD BE HELD TO BE A VALID EXERCISE OF JUDICIAL POWER.

XVI.

IN THIS CASE THE DISTRICT COURT'S INTERPRETATION OF ITS POWERS AS UPHELD BY THE COURT OF APPEALS—

a. HAS RESULTED IN DEPRIVING THE MASSACHUSETTS REGULATORY COMMISSION OF ALL REGULATION OF INTRASTATE PASSENGER SERVICE ON THE OLD COLONY DIVISION.

b. HAS FREED THE REORGANIZED RAILROAD OF ALL SUPERVISION BY STATE REGULATORY POWER.

XVII.

IT WOULD SEEM UNREASONABLE FOR THE INTERSTATE COMMERCE COMMISSION TO ASSUME JURISDICTION OVER PURELY INTRASTATE MATTERS.

Should it attempt to do so, the Railroad would be justified in questioning its authority. If, however, this Court should be inclined to hold that this question should be considered by the Interstate Commerce Commission because the Commonwealth's power to regulate might interfere with the interstate commerce of the reorganized Railroad, may it be remembered that the original petition of the reorganized Railroad did not make the Interstate Commerce Commission a party to these proceedings.

Respectfully submitted,

THE COMMISSION OF THE DEPARTMENT OF PUBLIC UTILITIES,

By their Attorneys,

FRANCIS E. KELLY,
Attorney General,

FRANCIS J. ROCHE,
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Assistant Attorney General.

Appendix.

UNITED STATES CODE.

11 U.S.C. 205(c)(6):

(c) *Proceedings after approval of petition.*

After approving the petition:

. . . . . .

(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49, as amended.

11 U.S.C. 205(f):

(f) *Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.*

Upon confirmation by the judge, the provisions of the plan and of the order of confirmation shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have, accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it. Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the

purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. The property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the judge may require the trustee or trustees appointed hereunder, the debtor, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may require the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, and making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Upon confirmation of a plan the Commission shall, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of chapter 1 of Title 49 as on August 27, 1935, or thereafter amended. The provisions of sections 77a to 77aa of Title 15 shall not apply to the issuance, sale, or exchange of any of the following securities, which securities and transactions therein shall, for

the purposes of said sections, be treated as if they were specifically mentioned in sections 77c and 77d of Title 15, respectively: (1) All securities issued pursuant to any plan of reorganization confirmed by the judge in accordance with the provisions of this section; (2) all securities issued pursuant to such plan for the purpose of raising money for working capital and other purposes of such plan; (3) all securities issued by the debtor or by the trustee or trustees pursuant to subsection (c), clause (3) of this section; (4) all certificates of deposit representing securities of, or claims against, the debtor, with the exception of such certificates of deposit as are issued by committees not subject to subsection (p) of this section. The provisions of subdivision (a) of section 78n of Title 15 shall not be applicable with respect to any action or matter which is within the provisions of subsection (p) of this section.

49 U.S.C. (18):

Extension or abandonment of lines; certificate required; contracts for joint use of spurs, switches, etc.

No carrier by railroad subject to this chapter shall . . . abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future convenience and necessity permit of such abandonment. . . .

MASSACHUSETTS GENERAL LAWS.

G.L. (Ter. Ed.) c. 25:

SECTION 5. When so requested by any party interested, the commission, or any member or members acting for the commission, shall rule upon any question of substantive law properly arising in the course of any proceedings be-

fore the commission or any member or members thereof, and any party in interest aggrieved by such ruling may object thereto, and may secure a review thereof as hereinafter provided. Any failure or refusal of the commission, or of any member or members thereof acting for the commission, to rule upon such a question at the request of any party in interest as aforesaid within ten days after such request, shall be taken and recorded as a ruling adverse to the party requesting the ruling.

The supreme judicial court shall have jurisdiction in equity to review, modify, amend or annul any ruling or order of the commission, or of any member or members representing the commission, but only to the extent of the unlawfulness of such ruling or order. The procedure before said court shall be that prescribed by its rules, which shall state upon what terms the enforcement of the order shall be stayed. The attorney for any party petitioning the supreme judicial court hereunder shall file with the clerk of the court a certificate that he is of opinion that there is such probable ground for the appeal as to make it a fit subject for judicial inquiry, and that it is not intended for delay; and double costs shall be assessed by the court upon any such party whose petition shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay. The burden of proof shall be upon the party adverse to the commission to show that its order is invalid. Any proceeding in any court of the commonwealth directly affecting an order of the commission or to which it is a party shall have preference over all other civil proceedings pending in such court, except election cases.

The supreme judicial court shall also have jurisdiction, upon application of the commission, to enforce all valid orders of the commission and the provisions of this chapter and of chapter one hundred and fifty-nine.

G.L. (Ter. Ed.) c. 159:

SECTION 16. If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees.